

Sumter City-County Board of Appeals

June 9, 2010

BOA-10-13, 716 Bultman Dr. (City)

I. THE REQUEST

Applicant: Roger Reed

Status of the Applicant: Contractor for Thai House

Request: A variance from the strict application of Article 8, Section J of the Sumter City Zoning Ordinance, parking and landscaping retrofitting requirements, and Exhibit 23 Off-Street Parking Requirements for Non-Residential Land Uses.

Location: 716-718 Bultman Dr.

Present Use/Zoning: Vacant Tenant Space & Restaurant/General Commercial, Highway Corridor Protection District (GC/HCPD)

Tax Map Reference: 204-05-03-059

II. BACKGROUND

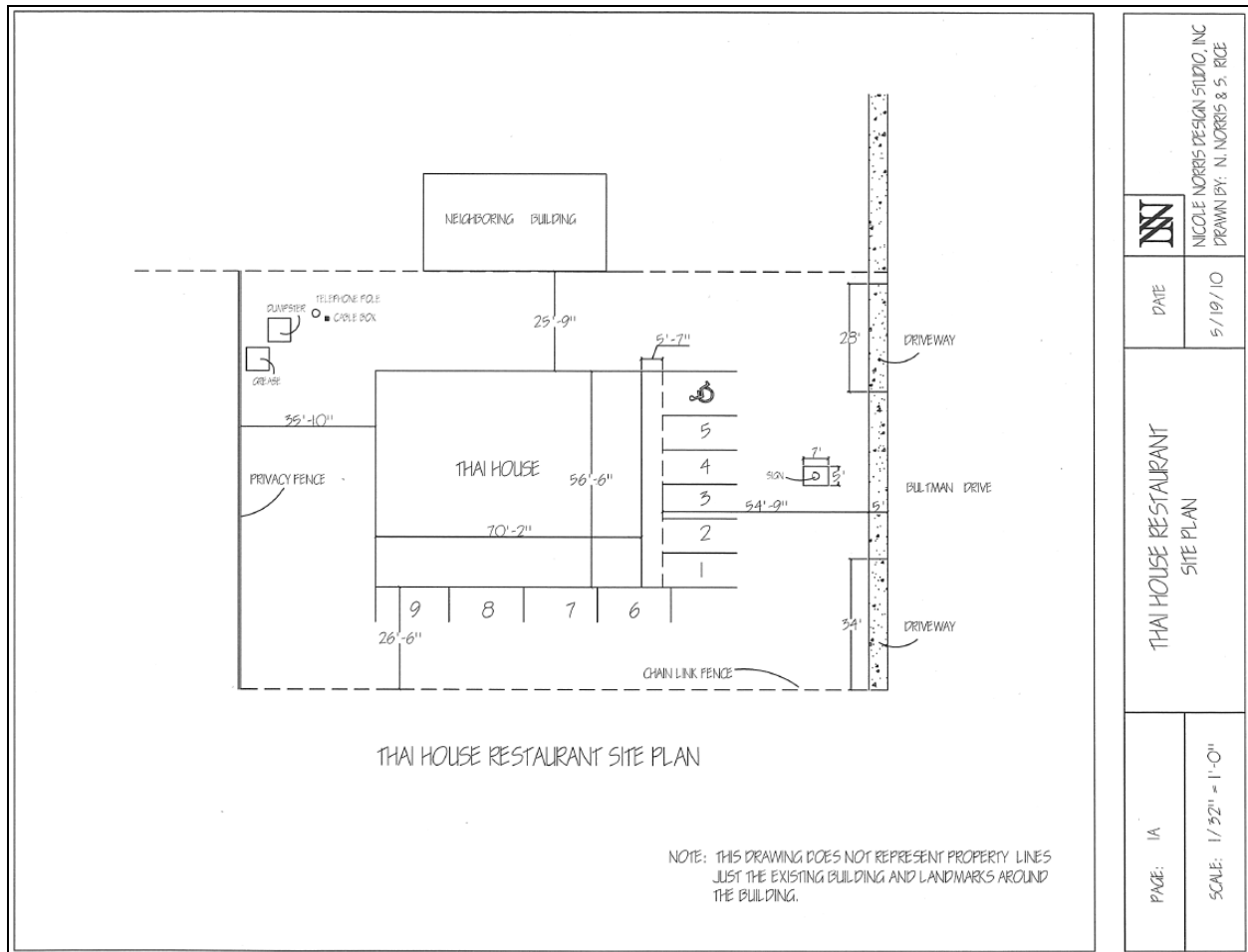
The applicant, Roger Reed, is requesting a variance from the required number of off-street parking spaces and the landscaping and curbing requirements for retrofitting the parking lot on a +/- .038 acre commercial property located on Bultman Dr., also known as Thai House Restaurant. The applicant has submitted an existing conditions site plan that shows the location of the existing parking on-site. The photograph above is how the site currently looks today.



716-718 Bultman Dr. tenant space building was constructed in 1959 with major improvements to the building in 1973. Site development predates the current Zoning Ordinance. Due to the age of construction, the site is non-conforming with respect to number of parking spaces, landscape and bufferyards, site access, and building setbacks.

The building is a +/- 3240 sq. ft. building with two tenant spaces—Space ‘A’, 1740 sq. ft. and Space ‘B’, 1500 sq. ft. Based on City of Sumter Business License Records, historically tenant space ‘A’ was used as a beauty shop and most recently a grocery store while tenant space ‘B’ has always been used as a restaurant.

On December 31, 2009, the business in tenant space 'A' closed and has remained unoccupied. On May 4, 2010, a building permit application for tenant up-fit was received to connect tenant space 'A' with tenant space 'B' as part of a restaurant expansion for the Thai House Restaurant. Upon receipt of the building permit application an off-street parking analysis was performed. As per Exhibit 23, Eating and Drinking Places are required to have 1.2 parking spaces for every 100 sq. ft. of gross floor area. Based on this standard, a 3240 sq. ft. restaurant is required to have at minimum 39 parking spaces.



Although the property has had continuous business activity, Section 8.j.2 states that when the need for parking has increased by more than 10% beyond what is currently on site, the parking lot must be retrofitted to comply with Section 8.j.3 of the City Zoning Ordinance. Section 8.j.3 states:

8.j.3. Design Requirements:

- a. **Definition:** For the purpose of these regulations an off-street parking space is an all weather dust free surface area, not in a street or alley, permanently reserved for the temporary storage of one automobile and connected with a street or alley by an all-weather dust free surface driveway which affords ingress and egress.

- b. **Surfacing, Drainage and Maintenance:** Off-street parking facilities shall be properly graded for drainage to prevent damage to abutting property and/or public streets and alleys. Parking lots shall be surfaced with asphalt, concrete, or other surfaces approved by the Sumter City-County Planning commission. Off street parking lots shall include concrete curbs and gutters, maintained in a clean, orderly and dust-free condition, and not used for the sale, repair or the dismantling or servicing of any vehicles, equipment, materials or supplies. (Note: For places of Worship (SIC 866) that only use their facilities a maximum of two days per week, the required parking spots do not have to be paved, and curb and gutter is not required. Any additional use beyond two days per week requires full compliance with the above paragraph.)
- d. **Parking spaces:** A standard car off-street parking space shall be not less than nine by nineteen (9' x 19'ft) feet, and a compact car off-street parking space shall be not less than eight by sixteen (8'x16'ft) feet in size.
- e. **Width of Aisles:** Providing direct access to individual parking spaces shall be in accordance with the requirements specified below:

EXHIBIT 21

GUIDELINES FOR PARKING LOT AISLES

<u>Parking Angle (Degree)</u>	<u>Aisle Width (Feet)</u>
30	12
45	13
60	18
90	25

- f. **Location on Other Property:** If the required number of off-street parking spaces cannot be provided as required in Exhibit 23 on the same lot with the principal use, such spaces may be provided on other off-street property under the same ownership, or on other property rented or leased, provided such property lies within four hundred (400 ft) feet walking distance of the main entrance to such principal use. A written agreement specifying the joint use arrangement of parking spaces shall be filed with the application for a building permit.
- g. **Common Off-street Parking Areas:** Two or more principal uses may utilize a common area in order to comply with off-street parking requirements; provided that the total number of spaces is not less than the sum of the spaces required for the individual uses as separately computed in accordance with the provisions of this Ordinance. Also, the owner of the parking lot shall relinquish his development rights over the property until such time as additional parking is provided elsewhere.

- j. ***Parking Spaces for the Physically Handicapped:*** *When off-street parking is required for any non-residential use, parking for the handicapped shall be included when calculating the overall parking requirements for a building...*
- k. ***Buffering and Landscaping:*** *All parking areas except those in the CBD and individual residential zoned lots shall be required to comply with 8.d.7. and 8.d.8. of this Ordinance. However, where parking lots on commercial or industrial zoned lots are located in the front of buildings the width of the buffer facing the street right-of-way shall be ten (10 ft) feet wide. All landscaping within the buffer shall be designed in compliance with the standards in 8.d.7.*

As per Section 8.j.3 and Exhibit 23, the property must be retrofitted to provide 39 parking spaces with concrete curb and gutter and must be retrofitted to include the following landscaped areas:

- 10 foot-wide bufferyard located out of the public ROW
- 5 foot-wide bufferyard along the interior sides of the parking lot
- A 10 foot-wide bufferyard along the rear property line
- Parking lot trees
- Curb and gutter
- Service area for garbage collection and utilities shall be screened and/or fenced to the equivalent of a five-foot bufferyard or privacy fence or some combination of the two.
- Plantings shall be watered regularly by an automatic and timed irrigation system or other acceptable methods of periodic watering.
- Plant materials shall be sufficiently large and planted in such a fashion that a year-round screen at least six (6) feet in height shall be produced within three (3) growing seasons. All plantings shall be installed according to acceptable horticultural standards.
- Deciduous street trees must have straight trunks and be of two-inch (2") caliper at time of planting. They must be placed at intervals of forty (40) feet or else shall have smaller understory trees planted in between.
- A site landscaping plan must be submitted and approved by staff at the Sumter City-County Planning Department because of the property's location within the Highway Corridor Protection District (HCPD).

A note to this issue: The Planning Commission has directed Planning Staff to review and draft an amendment to the non-conforming use section of the Zoning Ordinance to better address non-conforming sites. Staff is working on an approach which would require reasonable improvements to a non-conforming site in a manner directly proportional to the scale of the project, improvement, investment or property. A draft amendment will likely be reviewed by the Planning Commission in June of 2010.

III. THE REQUEST

The applicant is seeking variances from the required number of parking spaces, curb and gutter, and landscaping requirements because of the limited space on-site and because the updates required by the Ordinance would further diminish the functionality of the parcel.

In order for the Board of Appeals to grant a variance from the Zoning Ordinance, the proposed variance request must meet all four-parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

IV. FOUR-PART TEST

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

There are extraordinary or exceptional conditions pertaining to this particular piece of property based on the following:

- The property is an existing building that is located in the Highway Design Corridor. It is however, similar to many other buildings located to the immediate north, in that it was built in the early 1960s prior to the widening of Bultman Dr. Development also predates the current Zoning Ordinance regulations. The site is therefore nonconforming with respect to the required number of parking spaces and landscape/bufferyard requirements. In addition, the Bultman Dr. widening project impacted the street frontage of this lot through the loss of lot depth/street front bufferyard.

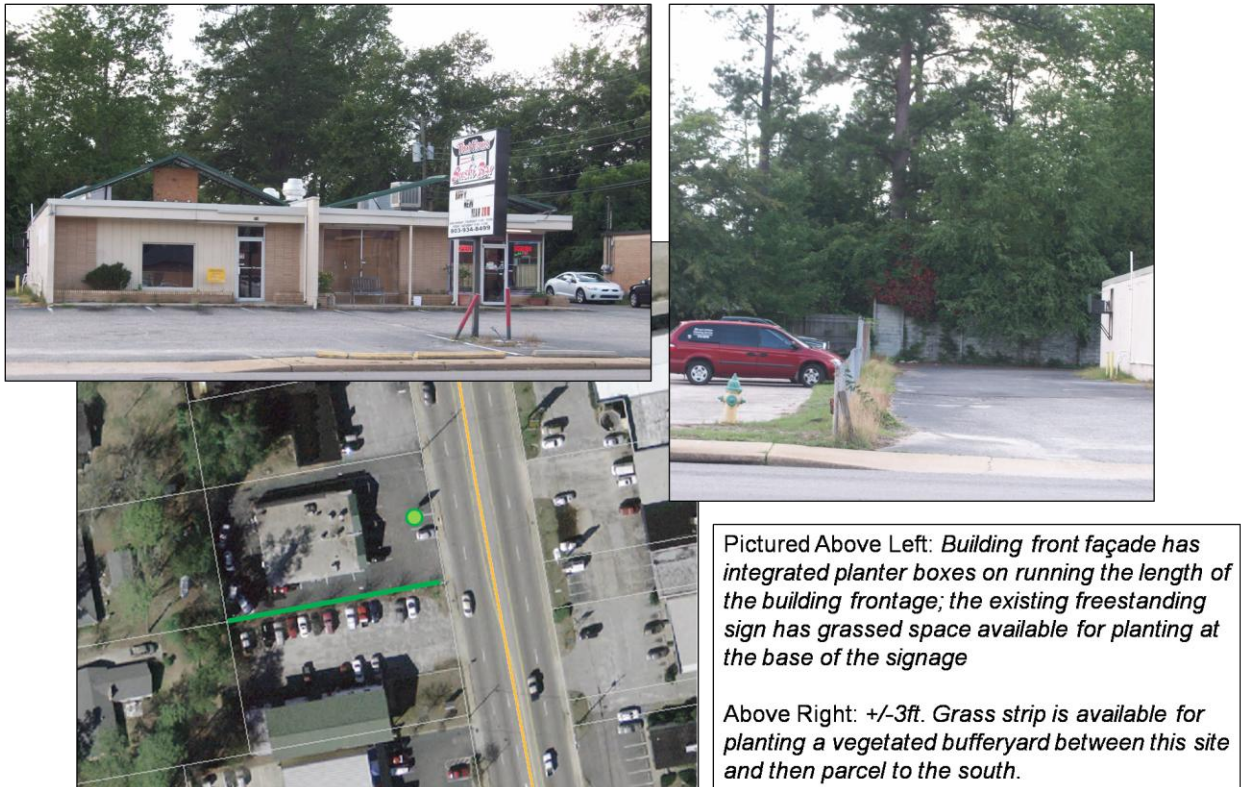
- Based on the submitted existing conditions plan there is less than 26 ft. between the Thai House building and the structure located on the parcel to the north. At +/-0.38 acres in size, there is a finite amount of space on the parcel available for parking lot development and bufferyard retrofitting. As shown in the aerial photograph to the right, the pavement for this site joins with the parcel to the north creating the



appearance of one continuous parking lot. This continuous pavement creates the appearance of a single parcel with shared parking. Current site development is such that rear access to

both buildings is shared, further limiting the ability to add a 5 ft. bufferyard on the north property line.

- Implementation of a 10 ft. bufferyard to the rear of the property also presents a challenge. There is approximately 35 ft. between the rear of the structure and the existing 6 ft. tall solid privacy fence, this rear area is where deliveries are taken. Because the structure does not meet the Ordinance required 50 ft. setback standard when abutting a residential use, there is not sufficient area to allow for safe navigation of delivery trucks and the implementation of a landscape bufferyard.



2. These conditions do not generally apply to other property in the vicinity.

These conditions *do* not generally apply to other properties in the vicinity based on the following:

- The properties to the immediate north and south have similar issues related to a lack of landscape bufferyards and meeting Ordinance minimum development standards for the required number of off-street parking spaces. What makes this particular site unique is that it is the only property being used for a restaurant in the immediate area, and has always been non-conforming with respect to the required number of parking spaces. The parking requirements for restaurant uses are much more intense than the parking standards for established uses in the area.
- Parcels in the immediate vicinity have been able to maintain their grandfathered non-conforming status because there has not been a 10% increase in the required number of spaces for those properties and/or they have not become vacant for more than 6 months.

3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

Absolute application of the ordinance requirement ***will prohibit*** or unreasonably restrict the utilization of this property due to the following:

- Parking and landscaping are a requirement of the ordinance and therefore must be complied with. Because parking is calculated according to the proposed use, changes in occupancy and increases in floor area for a given use impact the required number spaces. However, in certain parts of the community, the finite amount of space available to meet development standards and the sheer age of development do not allow for the reasonable retrofit and use of certain sites.
- Regardless of whether tenant space 'A' becomes part of the Thai House Restaurant or is used for another business, at minimum a variance on the number of required spaces and reductions in bufferyard requirements must be granted or the site will be rendered unusable under current regulations. The net result could be the continuous vacancy of tenant space 'A' and potentially the vacancy of tenant space 'B' in part, we suspect, to the strict requirements.

4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

- Developing this property with the variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate non-conforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area. Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance, however; there are rare occasions when incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than partial or complete vacancy on a parcel.

V. STAFF RECOMMENDATION

Staff recommends approval of BOA-10-13 contingent upon submission of a landscape plan that addresses the following:

- Installation of a +/-3 ft. landscaped buffer strip on the southern property line
- Installation of plantings at the base of the existing freestanding sign
- Repair the bollards at the base of the freestanding sign
- Removal of the wheel stops abutting Bultman Dr.
- Installation of planting in the planter boxes on the front façade.

Based on the fact that the requirements of the Four-Part Test are met, Staff believes this reasonable and proportionate approach is in the public interest. While we do not envision a time where the four part test supports a 100% variance for all site standards, the public good is served when reasonable improvement can be absorbed by property owners in the course increased business and tenancy. Expansion of an existing business with the addition of a little landscaping, short of full ordinance conformance, is much better than a vacant, 100% non-conforming site.

VI. DRAFT MOTIONS for BOA-10-13

- A.** I move that the Sumter Board of Appeals approve BOA-10-13 subject to the findings of fact and conclusions contained in the draft order dated June 9, 2010 attached as Exhibit 1.
- B.** I move that the Sumter Board of Appeals deny BOA-10-13 on the following findings of fact and conclusions:

VII. ZONING BOARD OF APPEALS – JUNE 9, 2010

The Sumter City-County Board of Appeals at its meeting on Wednesday, June 9, 2010, voted to approve this request, based on staff recommendation, and subject to the findings of fact and conclusions on exhibit 1.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-10-13, 716-718 Bultman Dr. (City)
June 9, 2010

Date Filed: June 9, 2010

Permit Case No. BOA-10-13

The Board of Zoning Appeals held a public hearing on Wednesday, June 9, 2010 to consider the request of Roger Reed, 5150 Mercy Ln., Dalzell, SC 29040 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☒ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The property is an existing building that is located in the Highway Design Corridor. It is however, similar to many other buildings located to the immediate north, in that it was built in the early 1960s prior to the widening of Bultman Dr. Development also predates the current Zoning Ordinance regulations. The site is therefore nonconforming with respect to the required number of parking spaces and landscape/bufferyard requirements. In addition, the Bultman Dr. widening project impacted the street frontage of this lot through the loss of lot depth/street front bufferyard.

Based on the submitted existing conditions plan there is less than 26 ft. between the Thai House building and the structure located on the parcel to the north. At +/-0.38 acres in size, there is a finite amount of space on the parcel available for parking lot development and bufferyard retrofitting. The pavement for this site joins with the parcel to the north creating the appearance of one continuous parking lot. This continuous pavement creates the appearance of a single parcel with shared parking. Current site development is such that rear access to both buildings is shared, preventing the implementation of a 5 ft. bufferyard on the north property line.

There is approximately 35 ft. between the rear of the structure and the existing 6 ft. tall solid privacy fence, this rear area is where deliveries are taken. Because the structure does not meet the ordinance required 50 ft. setback standard when abutting a residential use, there is not sufficient area to allow for safe navigation of delivery trucks and the implementation of a 10 ft. landscape bufferyard.

2. The Board concludes that these conditions ☐do - ☒ **do not** generally apply to other property in the vicinity based on the following findings of fact:

While the properties to the immediate north and south have similar issues related to a lack of landscape bufferyards and meeting Ordinance minimum development standards for the required number of off-street parking spaces, this particular site is unique in that it is the only property being used for a restaurant. The parking requirements for restaurant uses are much more intense than the parking standards for established uses in the area. In addition, tenant space 'B' has always been a restaurant and the site has always been non-conforming with respect to the number of parking spaces.

Parcels in the immediate vicinity have been able to maintain their grandfathered non-conforming status because there has not been a 10% increase in the required number of spaces for those properties and/or they have not become vacant for more than 6 months.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☒ **would** - ☐ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

Parking and landscaping are a requirement of the ordinance and therefore must be complied with. Because parking is calculated according to the proposed use, changes in occupancy and increases in floor area for a given use impact the required number spaces. However, in certain parts of the community, the finite amount of space available to meet development standards and the sheer age of development do not allow for the reasonable retrofit and use of certain sites.

Regardless of whether tenant space 'A' becomes part of the Thai House Restaurant or is used for another business, at minimum a variance on the number of required spaces and reductions in bufferyard requirements must be granted or the site will be rendered unusable under current regulations.

4. The Board concludes that authorization of the variance ☐ **will** - ☒ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☐ **will** - ☒ **will not** be harmed by the granting of the variance based on the following findings of fact:

Developing this property with the variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate non-nonconforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area.

Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance, however; there are occasions when incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than partial or complete vacancy on a parcel.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ DENIED –☒ GRANTED, subject to the following conditions:

The applicant will provide landscaping along the southern property line, around the base of the existing freestanding sign, and in the planter boxes along the front façade of the building. The bollards at the base of the freestanding sign will be repaired or replaced, and the wheel stops abutting Bultman Dr. are to be removed.

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.